

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/GB2004/004702

International filing date (day/month/year)
08.11.2004

Priority date (day/month/year)
06.11.2003

International Patent Classification (IPC) or both national classification and IPC
G06F9/44

Applicant
INTUWAVE LIMITED

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☒ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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10/578388

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/GB2004/004702

IA20 Rec'd PCT/PTO 05 MAY 2006

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Box No. II Priority

1. ☒ The validity of the priority claim has not been considered because the International Searching Authority does not have in its possession a copy of the earlier application whose priority has been claimed or, where required, a translation of that earlier application. This opinion has nevertheless been established on the assumption that the relevant date (Rules 43bis.1 and 64.1) is the claimed priority date.
2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/GB2004/004702

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	2,3,22,24-26
	No: Claims	1,4-21,23,27-34
Inventive step (IS)	Yes: Claims	
	No: Claims	1-34
Industrial applicability (IA)	Yes: Claims	1-34
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VI Certain documents cited

1. Certain published documents (Rules 43bis.1 and 70.10)

and /or

2. Non-written disclosures (Rules 43bis.1 and 70.9)

see form 210

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/GB2004/004702

Concerning Section I.
Basis of the report

1AP20 Rec'd PCT/PTO 05 MAY 2006

Reference is made to the following documents, which are cited in the International Search Report:

- D1: WO 03/036470 A (INTUWAVE LIMITED; SPOONER, DAVID) 1 May 2003 (2003-05-01)
 D2: WO 03/065654 A (KONINKLIJKE PHILIPS ELECTRONICS N.V.; MELPIGNANO, DIEGO) 7 August 2003 (2003-08-07)
 D3: WO 97/35254 A (MASSACHUSETTS INSTITUTE OF TECHNOLOGY) 25 September 1997 (1997-09-25)
 D4: EP-A-1 233 635 (MICROSOFT CORPORATION) 21 August 2002 (2002-08-21)
 D5: WO 2004/088508 A (INTUWAVE LIMITED; KARDASH, ANATOLY) 14 October 2004 (2004-10-14)

Concerning Section VI.
Certain documents cited:

Certain published documents (see Rule 70.10 PCT)

Application No Patent No	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
D5=WO 2004/088508	14.10.04	31.3.04	4.4.03

Concerning Section V.
Reasoned statement with regard to novelty, inventive step or industrial applicability

- 1 The subject-matter of present independent **Claims 1 and 31** is not novel (see Article 33 (2) PCT) in the light of prior art document D1 disclosing a method of rapid software development for a wireless mobile device (see D1, title), comprising the step of calling modular software elements (see D1, page 10, lines 20-24), that each
- (i) encapsulate functionality required by the wireless mobile device (see D1, page 5, line 30-page 6, line 6),
 - (ii) share a standard interface structure (see D1, page 11, lines 1-16, figure 3), and

(iii) execute on the device, under control of a high level language program, for instance a command line interface (see D1, page 11, line 24-30, page 13, lines 26-30, page 16, lines 1-7, 16-21).

- 2 Furthermore, it is pointed out that should the Applicant dispute the aforementioned novelty objection based on minor differences of interpretation between some of the features of these independent claims and the features of D1, the claimed subject-matter would still not seem to involve an inventive step (see Article 33(3) PCT) in the light of the above cited document D1, because there appears to be no feature having an underlying technical effect or solving a technical problem in both independent claims.
- 3 It is furthermore pointed out that even if the above novelty objection were overcome by amendments of a minor nature, the subject-matter of independent Claims 1 and 31 would still not seem to involve an inventive step (see Article 33(3) PCT), considering that D1 aims at the same object and discloses same type of solution as the present application.
- 4 The subject-matter of the software application **Claim 27** lacks novelty in the sense of Article 33(2) PCT and an inventive step (Article 33(3) PCT) for the same reasons.
- 5 The dependent **Claims 2-26, 28-30 and 32-34** do not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT with respect to novelty and/or inventive step, the reasons therefore are that their features have already been employed for the same purpose in the prior art (**Claims 2, 3, 33**: see D2, page 6, line 28 - page 7, line 2, page 7, lines 22-33, page 11, lines 16-30, figure 3, **Claims 4, 5, 33**: see D1, page 5, line 30 - page 6, line 21, **Claims 6, 33**: see D1, page 4, line 29, page 16, lines 23-29, **Claims 7, 8, 17, 19, 32, 33**: see D1, page 16, lines 1-7, 16-21, **Claims 9-15, 18, 21, 28, 29, 30, 33**: see D1, page 16, lines 1-7, 16-21, page 20, line 20-page 21, line 21, figure 11, **Claims 16, 33**: see D1, page 11, lines 1-16, **Claims 20, 33**: see D1, page 3, lines 14-17, 28-31, **Claims 22, 33**: see D1, page 5, lines 12f, page 6, lines 3f, see D2, page 6, line 28 - page 7, line 2, page 7, lines 22-33, page 11, lines 16-30, figure 3, **Claims 23, 33**: see D1, figure 6, **Claim 34**: see D1, page 5, lines 17-19),

don't have an underlying technical effect, or consist of slight constructional changes which come within the scope of the customary practice followed by persons skilled in the art.

- 6 It is not apparent which part of the application could serve as a basis for a new claim which would be in agreement with the PCT. However, if the Applicant regards some particular matter as new and inventive, an independent claim including such matter should be filed, e.g. when entering the national phase.

Then, the Applicant should also indicate in the letter of reply the difference of the subject-matter of the new claim vis-à-vis the state of the art (novelty, Article 33(2) PCT) and the significance **and underlying technical effect** thereof (inventive step, Article 33(3) PCT) in a very detailed manner!

- 7 Since the claimed subject-matter is already industrially applied or is at least already suggested by combinations of the documents D1 and D2, the requirements of Article 33(4) PCT are fulfilled.

8 Remarks concerning clarity of the international application:

- 8.1 The application contains 2 independent claims relating to a method of rapid software development (**Claims 1 and 31**). As these claims are of overlapping scope, the requirements of Article 6 PCT and Rule 6.1 (a) PCT regarding conciseness of the claims are not met. In detail, Claim 1 represents just the alternative a) of a high level language as suggested in dependent Claim 32!
- 8.2 From the present formulation of **Claim 27**, it is not clear how a software application developed using the method of Claim 1 differs from a software application developed in a traditional manner. This claim could be clarified as follows: "A software application comprising modular elements, that each (i) encapsulate ...".
- 8.3 In the light of the Rule 5.1(a)(iii) PCT, there must not exist any inconsistencies between the description and the claims, as it may throw doubt on the extent of protection and therefore render the claim unclear in the sense of Article 6 PCT.

However, the present formulation of **Claim 33** implies that all features of Claim 31 are defined twice, thereby defining a method having two times these features, which apparently is in contradiction to the description.

- 8.4 Similar comments apply to **Claim 17**, because the present formulation implies that one of these alternatives can be selected, whereas Claim 1 already comprises the command line interface (first alternative).
- 8.5 The features in the software application **Claims 28-30** are formulated as method steps rather than clearly defining the software in terms of its code means, contrary to the requirements of Article 6 PCT.
- 8.6 The **Claims 19 and 23** do not meet the requirements of Article 6 PCT in that the matter for which protection is sought is not defined. The claims attempt to define the subject-matter in terms of the result to be achieved which merely amounts to a statement of the underlying problems. The technical features necessary for achieving these results should have been added.
- 8.7 The term "device networking functions" of **Claim 3** lacks an antecedent basis and as such renders the scope of the claim unclear. It probably should refer to the "device networking functionality" mentioned before.
- 8.8 Similar comments apply to **Claims 6-9** ("the network element under control of a command line interface") and **Claims 11 and 13** ("the device-based elements controlled by a command line interface").

9 **Remarks concerning formal defects in the international application:**

- The independent claims should have been drafted in the proper two-part "characterised" form recommended by Rule 6.3.(b),(i),(ii) PCT, having a preamble that correctly reflects the nearest prior art, presumably that represented by the above noted D1.

- If necessary, the description should be brought into conformance with any claims

newly filed, e.g. when entering the national phase.

- Contrary to the requirements of Rule 5.1 (a),(ii) PCT, the relevant background art disclosed in the documents D1, D2 and D4 is not mentioned in the description, nor are these documents identified therein.
- Reference signs in parentheses should have been inserted in the claims to increase their intelligibility (see Rule 6.2 (b) PCT).
- The attention of the Applicant is finally drawn to the fact that, when entering the national phase, the application may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed (see Articles of the national law corresponding to Article 34.2(b) PCT like e.g. Article 123(2) EPC).
- In order to facilitate the examination of the conformity of the amended application with the requirements of these Articles, the Applicant is requested to clearly identify the amendments carried out, no matter whether they concern amendments by addition, replacement or deletion, and to indicate the passages of the application as filed on which these amendments are based (see also Rule 66.8(a) PCT).